

Selected Documents from Claim File

Claim No. LRF-1998-0720-01

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LIEN RECOVERY : **ORDER**
FUND CLAIM OF **READY MADE CONCRETE**,:
REGARDING THE CONSTRUCTION BY :
HOLLAND CONSTRUCTION, INC., : Claim No. LRF-1998-0720-01
DBA JIM HOLLAND CONSTRUCTION, :
BUILDERS, ON THE RESIDENCE OF :
WASATCH FARMS LLC/CRAIG TILLOTSON:

Being apprized of all relevant facts, the Director of the Division of Occupational and Professional Licensing finds, pursuant to the requirements for a disbursement from the Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(3)(1998), that the claimant has not complied with the requirements of UTAH CODE ANN. § 38-11-204(2)(1998). Specifically, Claimant has failed to timely file its claim application with the Residence Lien Recovery Fund within 120 days from the date that the non-paying party filed bankruptcy. Holland Construction, Inc., dba Jim Holland Construction filed Chapter 7 bankruptcy on February 24, 1998, and Claimant filed its claim application on July 20, 1998, 146 days later.

WHEREFORE, the Director of the Division of Occupational and Professional Licensing orders that the above-encaptioned claim is denied.

DATED this 9th day of November, 1998.



J. Craig Jackson, Director

CHALLENGE AFTER DENIAL OF CLAIM:

Under the terms of UTAH ADMINISTRATIVE CODE, R156-46b-201(e) (1996), this claim has been classified by the Division as a formal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**

MAILING CERTIFICATE

I hereby certify that on the 9th day of ~~October~~ ^{November}, 1998, a true and correct copy of the foregoing Order was sent first class mail, postage prepaid, to the following:

MICHAEL D JOHANSON
READY MADE CONCRETE
67 EAST 8000 SOUTH
MIDVALE UT 84047


Claimant

HOLLAND CONSTRUCTION INC
DBA JIM HOLLAND CONSTRUCTION
14637 SO SAGE CREST DRIVE
BLUFFDALE UT 84065-4943

Non-Paying Party

MONA LYMAN BURTON ESQ
MCKAY BURTON & THURMAN
10 EAST SOUTH TEMPLE
SALT LAKE CITY UT 84133

Counsel for Non-Paying Party


Signature

i:\home\dopl\claims\9807\98072001.ord



November 16, 1998

Douglas C. Borba, Executive Director
Utah Department of Commerce
Heber M. Wells Building
160 E. 300 So.
Box 146701
Salt Lake City, UT 84114-6701

Re: Challenge after Denial of Claim

Dear Mr. Douglas C. Borba,

I am the Controller of Ready Made Concrete and brought into your department the complete file regarding Holland Construction Inc. (state licensed contractor) and allowed all documents to be copied as support for our lien recovery claim. I had been in touch with your people on April 9, 1998 several months before the claim and had requested the procedures necessary to make a claim. A response was received by the middle of July 1998 and was completed by July 20, 1998. The late filing was a result of not receiving the procedures, on a timely basis, from your department. Ready Made Concrete is a small business and needs assistance rather than obstruction in resolving this claim.

Therefore, I formally challenge the denial of the claim and request agency review.

If you have any questions please feel free to call Mike at 568-6660.

Sincerely,

Michael D. Johanson

Michael D. Johanson, Controller



State of Utah

DEPARTMENT OF COMMERCE

Michael O. Leavitt
Governor
Douglas C. Borba
Executive Director

Heber M. Wells Building
160 East 300 South
P.O. Box 146701
Salt Lake City, Utah 84114-6701
(801) 530-6955
FAX 530-6001
INTERNET <http://www.commerce.state.ut.us>

December 11, 1998

Michael D. Johanson, Controller
Ready Made Concrete
67 E. 8000 South
Midvale UT 84047

RE: Lien Recovery Fund claim - Agency Review

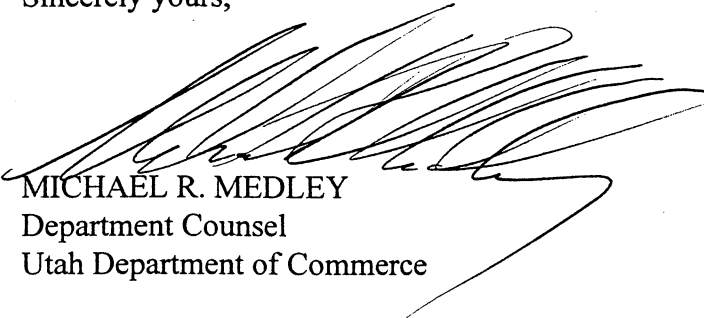
Dear Mr. Johanson:

In your request for agency review you allege that on April 9, 1998 you requested information from the Division of Occupational and Professional Licensing on the procedures necessary to perfect a claim against the lien recovery fund. You further claim that this information was not furnished by the division until the middle of July, long after the time for filing a claim had expired. Please furnish documentation or additional information to support your allegations within ten (10) days from the date of this letter.

By way of a copy of this letter I am requesting that the division furnish a response to your allegations in this matter within the same period of ten (10) days from the date of this letter.

Thank you for your cooperation and assistance in this matter.

Sincerely yours,


MICHAEL R. MEDLEY
Department Counsel
Utah Department of Commerce

DEC 14 1998

RECEIVED
DIVISION OF OCCUPATIONAL
AND PROFESSIONAL LICENSING

cc: Masuda Medcalf, Program Coordinator, Lien Recovery Fund, DOPL
Douglas C. Borba, Executive Director, Utah Department of Commerce

BEFORE THE
DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE REQUEST
FOR AGENCY REVIEW OF
READY MADE CONCRETE

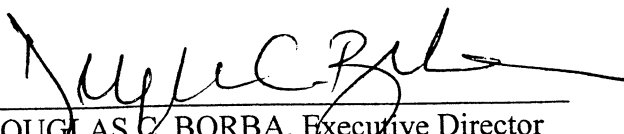
ORDER OF REMAND
:
:
:
:
Case No. LRF-1998-0720-01

ORDER

THIS DAY THIS MATTER came on to be heard upon the Joint Stipulation of the parties requesting that this case be remanded to the Division of Occupational and Professional Licensing ("Division") to permit the Division to amend its previous order in this matter to address issues and claims raised by Ready Made Concrete for the first time on appeal to the Executive Director; and the Executive Director having examined the stipulation and being of the opinion that the request should be granted, it is, therefore

ORDERED that the above styled and numbered cause should be and is hereby remanded to the Division of Occupational and Professional Licensing for further consideration and the entry of an amended order without prejudice to the right of Ready Made Concrete to appeal any amended order upon entry thereof by the Division if it so elects.

SO ORDERED this the 6th day of January, 1999.



DOUGLAS C. BORBA, Executive Director
Utah Department of Commerce

OFFICE OF THE ATTORNEY GENERAL
CONSUMER RIGHTS DIVISION
BOX 140872
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-0872
Telephone (801) 366-0310
Fax (801) 366-0315

ATTORNEY GENERAL'S
OFFICE

DEC 28 1998

RECEIVED

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If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the address above/below via regular U.S. mail.

FAX COVERSHEET

DATE: 12/21/98

TIME: 3:35 p.m.

PLEASE DELIVER THE FOLLOWING PAGES TO: 3 Michael Johanson

NUMBER OF PAGES INCLUDING THIS COVER PAGE: 3

FAX NUMBER OF DESTINATION: 568-9147

FROM: Tony Patterson

IF YOU DO NOT RECEIVE ALL OF THE PAGES OR HAVE A PROBLEM RECEIVING THIS FAX, PLEASE CALL (801) 366-0310

Please sign and Date the following Joint Stipulation and return the original signed document to me at the above Box number. Thank you for your assistance in this matter.

MEMO

TO: FILE

FROM: MASUDA MEDCALF

DATE: DECEMBER 15, 1998

RE: LRF 1998-0720-01, Ready Made Concrete v. Jim Holland Construction

On 12/15/98, I actually reached Jim Sparks, Manager of Wasatch Farms. Sparks informed that Tax records show Wasatch Farms LLC as the owner of the real estate at 10750 Wasatch Blvd., and Craig Tillotson as its general manager. He informed that Wasatch Farms is in the "Mare Lease Program" business. There is no residence yet on the 15 acre property; 4 to 5 years ago a barn and hay barn were built; in 1997 James Holland Construction was hired to pour concrete for a gazebo intended to be built by Wasatch Farms itself, the gazebo to be 400 to 500 feet from where the primary residence will some day be located. Thus, there is no residence on this property, but Sparks said that Tillotson sometimes sleeps at the barn, which has a sleeping loft. Sparks will mail a copy of the written contract with Holland Construction. The information Sparks provided still raises the question whether this property is a "residence" and whether Wasatch Farms is an "owner" as defined in the LRF Act.

DIVISION OF OCCUPATIONAL
AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South
Box 146741
Salt Lake City, UT 84114-6741
Telephone: (801) 530-6628

BEFORE THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH

IN THE MATTER OF THE REQUEST
FOR AGENCY REVIEW OF
READY MADE CONCRETE

: JOINT STIPULATION

:
:
: Case No. LRF-1998-0720-01

The Division of Occupational and Professional Licensing (hereinafter the "Division"), by and through its counsel, Tony R. Patterson, Assistant Attorney General, and Ready Made Concrete, Inc., (hereinafter the "Claimant"), do hereby stipulate and agree as follows:

1. The matter on Agency Review may be remanded back to the Division of Occupational and Professional Licensing to amend the Division's Order. The amended Order will address the claim raised for the first time on Agency Review and the information that was discovered after the initial Order was issued.

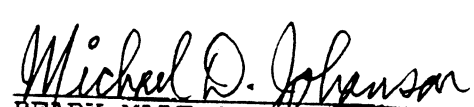
2. Claimant enters into this Stipulation voluntarily, and other than what is contained in this agreement, no promise whatsoever has been made by the Division, or any member, officer, agent or representative of the Division to induce the signing of this stipulation.

3. Claimant understands that it is not waving its right to Agency Review after the Division's Amended Order is issued.

Dated this 28 day of December, 1998.


TONY R. PATTERSON
Assistant Attorney General

DATED this 22 day of DECEMBER, 1998.


READY MADE CONCRETE
By: MICHAEL D. JOHANSON
Controller

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LIEN RECOVERY : **AMENDED ORDER**
FUND CLAIM OF **READY MADE CONCRETE**,:
REGARDING THE CONSTRUCTION BY :
HOLLAND CONSTRUCTION, INC., : Claim No. LRF-1998-0720-01
DBA JIM HOLLAND CONSTRUCTION, :
BUILDERS, ON THE RESIDENCE OF :
WASATCH FARMS LLC/CRAIG TILLOTSON:

Pursuant to the Joint Stipulation of the parties, and the Executive Director's Order of Remand, the Director of the Division of Occupational and Professional Licensing hereby enters this Amended Order denying the claim of Ready Made Concrete on two alternative jurisdictional grounds.

First, the Director hereby orders that Claimant has not complied with the requirements of UTAH CODE ANN. § 38-11-204(2)(1998), because it failed to timely file its claim application with the Residence Lien Recovery Fund within 120 days from the date that Holland Construction, Inc., dba Jim Holland Construction filed Chapter 7 bankruptcy. The bankruptcy filing was on February 24, 1998, and Claimant filed its claim application on July 20, 1998, 146 days later. Claimant has argued in its Request for Agency Action that it requested claim filing forms and information regarding filing procedures from the Division on April 9, 1998, but did not receive the requested forms until mid July, causing the late filing of its claim. However, Division records indicate that the Residence Lien Recovery Board Secretary spoke with Mike Johanson of Ready Made Concrete on May 7, 1998, and mailed the requested forms to him on that same date.

Furthermore, the actions of the parties do not change jurisdictional time requirements set by statute.

Secondly, the Division lacks jurisdiction because the Residence Lien Restriction and Lien Recovery Fund Act (“Act”) does not apply to the services provided by Claimant on the subject property; the property does not meet the Act’s definition of “residence,” and Craig Tillotson does not meet the Act’s definition of “owner.” One of the requirements to claiming recovery from the fund is that the claimant must show that it was a qualified beneficiary during the construction on the “owner-occupied residence.” UTAH CODE ANN. § 38-11-204(1)(c)(ii) (1998). “Owner-occupied residence” means a “residence” that is occupied within 180 days from completion of construction on the “residence.” UTAH CODE ANN. § 38-11-102(13) (1998). “Residence” is defined as “an improvement to real property used or occupied, to be used or occupied as, or in conjunction with, a primary or secondary detached single family residence or multifamily residence up to two units.” UTAH CODE ANN. § 38-11-102(17) (1998). Finally, “owner” means a person who contracts with a contractor for construction on an “owner-occupied residence.” UTAH CODE ANN. § 38-11-102(12) (1998).

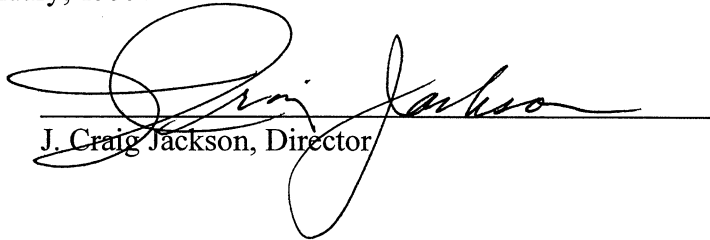
Since issuance of the Division’s initial Order denying this claim, Division staff received information from Jim Sparks, Manager of Wasatch Farms, the entity which apparently contracted with non-paying party, Holland Construction, Inc. dba Jim Holland Construction, for a “London Cobblestone Stamp Concrete Pad.” Mr. Sparks informed the Division that: Wasatch Farms is the record owner of the property located at 10750 Wasatch Boulevard, with Craig Tillotson as its General Manager; Wasatch Farms is in the business of mare leasing; that Holland Construction was hired by Wasatch Farms to provide a concrete pad for a gazebo on the property; that there is presently no residence on the property, and one is not expected to be built for several years; and

that there is a barn on this property, which has a sleeping loft, where Mr. Tillotson sometimes sleeps.

The information provided by Mr. Sparks indicates that the gazebo is not a "residence" and Wasatch Farms is not an "owner" as defined in the Act.

WHEREFORE, the Director of the Division of Occupational and Professional Licensing orders that the above-encaptioned claim is denied.

DATED this 27th day of January, 1999.



J. Craig Jackson, Director

CHALLENGE AFTER DENIAL OF CLAIM:

Under the terms of UTAH ADMINISTRATIVE CODE, R156-46b-201(e) (1996), this claim has been classified by the Division as a formal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**

MAILING CERTIFICATE

I hereby certify that on the 28 day of January 1999, a true and correct copy of the foregoing Order was sent first class mail, postage prepaid, to the following:

MICHAEL D JOHANSON
READY MADE CONCRETE
67 EAST 8000 SOUTH
MIDVALE UT 84047

Claimant

HOLLAND CONSTRUCTION INC
DBA JIM HOLLAND CONSTRUCTION
14637 SO SAGE CREST DRIVE
BLUFFDALE UT 84065-4943

Non-Paying Party

MONA LYMAN BURTON ESQ
MCKAY BURTON & THURMAN
10 EAST SOUTH TEMPLE
SALT LAKE CITY UT 84133

Counsel for Non-Paying Party

Kathie K Schwab

Signature

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